

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

IN RE 22ND CENTURY GROUP, INC.  
DERIVATIVE LITIGATION

Lead Case No. 1:19-cv-00479-JLS

**JOINT STATUS UPDATE**

Plaintiffs Stephen Mathew and Cindy Maloney, the Executrix of the Estate of Melvyn Klein (“Plaintiffs”), nominal defendant 22nd Century Group, Inc. (“22nd Century”), and individual defendants James W. Cornell, Richard M. Sanders, Nora B. Sullivan, Henry Sicignano, III, and John T. Brodfuehrer (together with 22nd Century, the “Defendants”), pursuant to the Court’s February 15, 2023 Order (ECF No. 23, the “Order”), hereby submit the following joint status update:

1. The above-referenced derivative action (the “Derivative Action”) was stayed pending the close of fact discovery in the related securities class action captioned, *Bull v. 22nd Century Group, et al.*, Case No. 1:19-cv-01285 (W.D.N.Y.) (the “Securities Class Action”). ECF No. 23, ¶ 2.

2. On March 21, 2023, plaintiffs and defendants in the Securities Class Action and the Derivative Action participated in a mediation before Jed Melnick, Esq. of JAMS ADR (“Mediator”) that resulted in the settlement of the Securities Class Action, pending approval of the settlement agreement by the Court. On October 23, 2023, the Court approved the Class Action settlement and dismissed the Class Action with prejudice.

3. On September 1, 2023, Plaintiff Kenneth Troup filed a shareholder derivative action alleging substantially similar facts and asserting similar causes of action as those asserted in the Derivative Action against the Defendants and James Mish, Michael Koganov,

Anthony Johnson, Lucille Salhany, and Andy Aron captioned *Troup v. Sullivan, et al.*, Case No. 1:23-cv-00916-JLS (W.D.N.Y.) (the “Troup Action”).

4. On February 9, 2024, Defendants moved this Court to consolidate the Troup Action with this Derivative Action, pursuant to the Court’s August 15, 2019 Order (ECF No. 10).

5. The parties in this Derivative Action and the Troup Action have been engaging in ongoing settlement discussions, and the parties in the Derivative Action attended a half-day mediation on October 17, 2023.

6. The parties in this Derivative Action executed a memorandum of understanding regarding settlement and are continuing to finalize a stipulation of settlement for approval by the Court pursuant to Federal Rule of Civil Procedure 23.1(c).

DATED: May 13, 2024

**THE BROWN LAW FIRM, P.C.**

/s/ Timothy Brown  
Timothy Brown  
767 Third Avenue, Suite 2501  
New York, NY 10017  
Telephone: (516) 922-5427  
Facsimile: (516) 344-6204  
Email: [tbrown@thebrownlawfirm.net](mailto:tbrown@thebrownlawfirm.net)

DATED: May 13, 2024

**GAINY McKENNA & EGLESTON**

/s/ Thomas J. McKenna  
Thomas J. McKenna  
Gregory M. Egleston  
260 Madison Avenue, 22<sup>nd</sup> Floor  
New York, New York 10016  
Telephone: (212) 983-1300  
Facsimile: (212) 983-0383  
Email: [tjmckenna@gme-law.com](mailto:tjmckenna@gme-law.com)  
Email: [gegleston@gme-law.com](mailto:gegleston@gme-law.com)

*Co-Lead Counsel for Plaintiffs*

DATED: May 13, 2024

**FOLEY & LARDNER LLP**

/s/ Jonathan H. Friedman

Jonathan H. Friedman  
90 Park Avenue  
New York, NY 10016  
Telephone: 212-338-3416  
Facsimile: 212-687-2329  
Email: [jfriedman@foley.com](mailto:jfriedman@foley.com)

*and*

Charles C. Ritter, Jr.  
**DUKE, HOLZMAN, PHOTIADIS  
& GRESENS LLP**  
701 Seneca Street, Suite 750  
Buffalo, NY 14210  
Telephone: (716) 855-1111  
Facsimile: (716) 855-0327  
Email: [critter@dhpqlaw.com](mailto:critter@dhpqlaw.com)

*Counsel for Defendants*